

III. REMARKS

Claims 82 – 87 previously stood allowed. However, the Examiner in charge of the present application, Mr. Manuel Mendez, has now rejected all of the claims in the present application, i.e., claims 82-87, based on following:

1. The remarks submitted on December 17, 2009, concerning the decision of Judge Kocoras involving U.S. Patent No. 5,411,474 to Ott, et al.,
2. The comments presented by the applicant in the REMARKS section, pages 5-8, submitted on February 9, 2005, explaining the support for the copied claims in the specification of this application, and
3. The subject matter disclosed in U.S. Patent No. 5,411,474 in light of the comments presented by applicant in the REMARKS section, pages five – eight, submitted on February 9, 2005.

Claim Rejections – 35 USC§ 103

It is first noted that each of claims 82-86 is rejected under 35 USC § 102(b), as anticipated by, or, in the alternative, under 35 USC 103 (a), as obvious over Ott, et al. Only claim 87 is rejected strictly on obviousness grounds. Therefore, the following heading will be used when discussing claims 82 – 86.

Rejection of Claim 82 under 35 USC§ 102(b), or in the alternative, 35 USC § 103 (a)

The Examiner has rejected Claim 82 under 35 USC § 102 (b) as anticipated by, or in the alternative, under 35 USC 103 (a), as obvious over Ott in view of the comments presented by Applicant in the REMARKS section, pages 5-8, submitted on February 9, 2005.

The Examiner states that in relation to claim 82, in Figs. 1-2, the Ott ('474) patent shows an inlet (14), a humidification device (6) in fluid communication with the inlet (14), a humidification material (30, 32) placed in a shell (16), and an outlet (29). The Examiner admits that the Ott ('474) patent does not explicitly disclose a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment".

The Examiner points out that in the REMARKS, page 5, starting at line 20, Applicant defined such material as: "one or more layers of liquid – retaining or absorbing padding or sponge material." In view of this definition, the Examiner maintains that the patent shows in chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of liquids. The use of the membranes is further defined in column 6, lines 35-36 and lines 44-51.

The Examiner concludes "Therefore, based on the teachings of Ott and the definition disclosed in the REMARKS it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment".

The are **several errors** in this analysis. First, the Examiner has stated that the Ott '474 patent shows a humidification material (30, 32) placed in a shell 16 and an outlet 29. No where in the patent are 30 and 32 referred to as a humidification material. They are only referred to as "optional gas permeable membranes".

Next, using this erroneous definition, the Examiner goes on to state that in Fig. 2 the Ott ('474) patent shows a chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water-containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of fluids. This is in error as the optional, gas permeable membranes (30, 32) are not necessary when a water retaining material infused with water comprises humidification bed 28 (col. 8, lns. 34-36). A water retaining material is not the same as a water absorbing material.

The Examiner compounds this error by stating the use of the membranes (30, 32) is further defined in column six, lines 35-36 and lines 44-51. A reading of these lines show that they do not talk amount about the membranes at all, but only discuss the water containing humidifying bed 28.

Building on these errors, the Examiner states "it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment".

The Examiner's conclusion that "the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment" **is completely in error**. The applicable definition of a "gas-

permeable membrane", attached hereto as Exhibit A, shows that such a membrane has pores of a size which let gas molecules through.

Optional gas permeable membrane 30 truly only needs to let gas molecules through, as insufflation gases are typically delivered extremely dry (column 2, lines 32-36) There is no teaching whatsoever that membrane 30 is to absorb water or release water.

What needs to pass through optional gas permeable membrane 32 is quite different. As stated at column 6, lines 44-50, "The water – containing humidifying bed 28 provides humidification within chamber 6 such that gas 27 exiting chamber 6 is humidified. After the insufflator gas 21 has been temperature/humidity conditioned in chamber 6, it exits enclosure 31 (as gas 27) through optional gas permeable membrane 32. Thus, it can be seen that optional gas permeable membrane 32 must pass gas and water vapor molecules for the device of the ('474) patent to operate as intended. Thus there is no teaching that optional gas permeable membrane 32 is to absorb or release water. It needs to let water vapor pass-through. Therefore the entire teaching of the ('474) patent **teaches against** the Examiner's conclusion.

The Examiner has rejected claim 82 in the alternative. In view of the above, neither the "anticipation" rejection, nor is the "obviousness" rejection is proper. For an "anticipation" rejection to be proper each and every element of the claim must be found in the reference being cited. Since the Examiner's finding of a material that readily absorbs and readily releases moisture was an error, this element of claim 82 is missing, and the "anticipation" rejection" is improper.

Likewise, a rejection of claim 82 on obviousness grounds would be in error because the Ott ('474) patent does not teach or suggest a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment", it only teaches a material that retains moisture when infused with water.

In view of the above, Claim 82 is allowable.

Rejection of Claim 83 under 35 USC § 102(b), or in the alternative, 35 USC § 103 (a)

The Examiner has rejected Claim 83 under 35 USC § 102 (b) as anticipated by, or in the alternative, under 35 USC 103 (a), as obvious over Ott in view of the comments presented by Applicant in the REMARKS section, pages 5-8, submitted on February 9, 2005.

The Examiner states that in relation to claim 83, in Figs. 1-2, the Ott ('474) patent shows an inlet (14), a humidification device (6) in fluid communication with the inlet (14), a humidification material (30, 32) placed in a shell (16), and an outlet (29). The Examiner admits that the Ott ('474) patent does not explicitly disclose a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment".

The Examiner points out that in the REMARKS, page 5, starting at line 20, Applicant defined such material as: "one or more layers of liquid – retaining or absorbing padding or sponge material." In view of this definition, the Examiner maintains that the patent shows in chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water containing humidifying bed (28) wherein the water is retained in the bed by the two

gas permeable membranes that allow gas to flow, but restrict the flow of liquids. The use of the membranes is further defined in column 6, lines 35-36 and lines 44-51.

The Examiner concludes "Therefore, based on the teachings of Ott and the definition disclosed in the REMARKS it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment".

There are **several errors** in this analysis. First, the Examiner has stated that the Ott '474 patent shows a humidification material (30, 32) placed in a shell 16 and an outlet 29. Nowhere in the patent are 30 and 32 referred to as a humidification material. They are only referred to as "optional gas permeable membranes".

Next, using this erroneous definition, the Examiner goes on to state that in Fig. 2 the Ott ('474) patent shows a chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water-containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of fluids. This is in error as the optional, gas permeable membranes (30,32) are not necessary when a water retaining material infused with water comprises humidification bed 28 (col. 8, lns. 34-36). A water retaining material is not the same as a water absorbing material.

The Examiner compounds this error by stating the use of the membranes (30, 32) is further defined in column six, lines 35-36 and lines 44-51. A reading of these lines show that they do not talk amount about the membranes at all, but only discuss the water containing humidifying bed 28.

Building on these errors, the Examiner states “it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment”.

The Examiner’s conclusion that “the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment” **is completely in error**. The applicable definition of a “ gas permeable membrane”, attached hereto as Exhibit A, shows that such a membrane has pores of a size which lets gas molecules through.

Optional gas permeable membrane 30 truly only needs to let gas molecules through, as insufflation gases are typically delivered extremely dry (column 2, lines 32-36) There is no teaching whatsoever that membrane 30 is to absorb water or release water.

What needs to pass through optional gas permeable membrane 32 is quite different. As stated at column 6, lines 44-50, “The water – containing humidifying bed 28 provides humidification within chamber 6 such that gas 27 exiting chamber 6 is humidified. After the insufflator gas 21 has been temperature/humidity conditioned in chamber 6, it exits enclosure 31 (as gas 27) through optional gas permeable membrane 32. Thus, it can be seen that optional gas permeable membrane 32 must pass gas and water vapor molecules for the device of the (‘474) patent to operate as intended. Thus there is no teaching that optional gas permeable membrane 32 is to absorb or release water. It needs to let water vapor pass-through. Therefore the entire teaching of the (‘474) patent **teaches against** the Examiner’s conclusion.

The Examiner has rejected claim 83 in the alternative. In view of the above, neither the "anticipation" rejection, nor is the "obviousness" rejection is proper. For an "anticipation" rejection to be proper each and every element of the claim must be found in the reference being cited. Since the Examiner's finding of a material that readily absorbs and readily releases moisture was an error, this element of claim 83 is missing, and the "anticipation" rejection" is improper.

Likewise, a rejection of claim 83 on obviousness grounds would be in error because the Ott ('474) patent does not teach or suggest a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment". It only teaches a water retaining material.

In view of the above, Claim 83 is allowable.

Rejection of Claim 84 under 35 USC § 102(b), or in the alternative, 35 USC § 103 (a)

The Examiner has rejected Claim 84 under 35 USC § 102 (b) as anticipated by, or in the alternative, under 35 USC 103 (a), as obvious over Ott in view of the comments presented by Applicant in the REMARKS section, pages 5-8, submitted on February 9, 2005.

The Examiner states that in relation to claim 84, in Figs. 1-2, the Ott ('474) patent shows an inlet (14), a humidification device (6) in fluid communication with the inlet (14), a humidification material (30, 32) placed in a shell (16), and an outlet (29). The Examiner admits that the Ott ('474) patent does not explicitly disclose a humidification material that

readily absorbs moisture and readily releases moisture when exposed to a dry environment”.

The Examiner points out that in the REMARKS, page 5, starting at line 20, Applicant defined such material as: “one or more layers of liquid – retaining or absorbing padding or sponge material.” In view of this definition, the Examiner maintains that the patent shows in chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of liquids. The use of the membranes is further defined in column 6, lines 35-36 and lines 44-51.

The Examiner concludes “Therefore, based on the teachings of Ott and the definition disclosed in the REMARKS it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment”.

There are **several errors** in this analysis. First, the Examiner has stated that the Ott ‘474 patent shows a humidification material (30, 32) placed in a shell 16 and an outlet 29. Nowhere in the patent are 30 and 32 referred to as a humidification material. They are only referred to as “optional gas permeable membranes”.

Next, using this erroneous definition, the Examiner goes on to state that in Fig. 2 the Ott (‘474) patent shows a chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water-containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of fluids. This is in error as the optional, gas permeable membranes (30,32) are not

necessary when a water retaining material infused with water comprises humidification bed 28 (col. 8, Ins. 34-36). A water retaining material is not the same as a water absorbing material.

The Examiner compounds this error by stating the use of the membranes (30, 32) is further defined in column six, lines 35-36 and lines 44-51. A reading of these lines show that they do not talk amount about the membranes at all, but only discuss the water containing humidifying bed 28.

Building on these errors, the Examiner states "it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment".

The Examiner's conclusion that "the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment" **is completely in error**. The applicable definition of a "gas permeable membrane", attached hereto as Exhibit A, shows that such a membrane has pores of a size which let gas molecules through.

The Examiner's conclusion that "the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment" **is completely in error**. The applicable definition of a "gas-permeable membrane", attached hereto as Exhibit A, shows that such a membrane has pores of a size which let gas molecules through.

Optional gas permeable membrane 30 truly only needs to let gas molecules through, as insufflation gases are typically delivered extremely dry (column 2, lines 32-36). There is no teaching whatsoever that membrane 30 is to absorb water or release water.

What needs to pass through optional gas permeable membrane 32 is quite different. As stated at column 6, lines 44-50, "The water – containing humidifying bed 28 provides humidification within chamber 6 such that gas 27 exiting chamber 6 is humidified. After the insufflator gas 21 has been temperature/humidity conditioned in chamber 6, it exits enclosure 31 (as gas 27) through optional gas permeable membrane 32. Thus, it can be seen that optional gas permeable membrane 32 must pass gas and water vapor molecules for the device of the ('474) patent to operate as intended. Thus there is no teaching that optional gas permeable membrane 32 is to absorb or release water. It needs to let water vapor pass-through. Therefore the entire teaching of the ('474) patent **teaches against** the Examiner's conclusion.

The Examiner has rejected claim 84 in the alternative. In view of the above, neither the "anticipation" rejection, nor is the "obviousness" rejection is proper. For an "anticipation" rejection to be proper each and every element of the claim must be found in the reference being cited. Since the Examiner's finding of a material that readily absorbs and readily releases moisture was an error, this element of claim 84 is missing, and the "anticipation" rejection is improper.

Likewise, a rejection of claim 84 on obviousness grounds would be in error because the Ott ('474) patent does not teach or suggest a humidification material that readily

absorbs moisture and readily releases moisture when exposed to a dry environment". It only suggests a water retaining material.

In view of the above, Claim 84 is allowable.

Rejection of Claim 85 under 35 USC § 102(b), or in the alternative, 35 USC § 103 (a)

The Examiner has rejected Claim 85 under 35 USC § 102 (b) as anticipated by, or in the alternative, under 35 USC 103 (a), as obvious over Ott in view of the comments presented by Applicant in the REMARKS section, pages 5-8, submitted on February 9, 2005.

The Examiner states that in relation to claim 85, in Figs. 1-2, the Ott ('474) patent shows an inlet (14), a humidification device (6) in fluid communication with the inlet (14), a humidification material (30, 32) placed in a shell (16), and an outlet (29). The Examiner admits that the Ott ('474) patent does not explicitly disclose a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment".

The Examiner points out that in the REMARKS, page 5, starting at line 20, Applicant defined such material as: "one or more layers of liquid – retaining or absorbing padding or sponge material." In view of this definition, the Examiner maintains that the patent shows in chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of liquids. The use of the membranes is further defined in column 6, lines 35-36 and lines 44-51.

The Examiner concludes "Therefore, based on the teachings of Ott and the definition disclosed in the REMARKS it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment".

There are **several errors** in this analysis. First, the Examiner has stated that the Ott '474 patent shows a humidification material (30, 32) placed in a shell 16 and an outlet 29. Nowhere in the patent are 30 and 32 referred to as a humidification material. They are only referred to as "optional gas permeable membranes".

Next, using this erroneous definition, the Examiner goes on to state that in Fig. 2 the Ott ('474) patent shows a chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water-containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of fluids. This is in error as the optional, gas permeable membranes (30,32) are not necessary when a water retaining material infused with water comprises humidification bed 28 (col. 8, lns. 34-36). A water retaining material is not the same as a water absorbing material.

The Examiner compounds this error by stating the use of the membranes (30, 32) is further defined in column six, lines 35-36 and lines 44-51. A reading of these lines show that they do not talk amount about the membranes at all, but only discuss the water containing humidifying bed 28.

Building on these errors, the Examiner states “it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment”.

The Examiner’s conclusion that “the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment” **is completely in error**. The applicable definition of a “gas permeable membrane”, attached hereto as Exhibit A, shows that such a membrane has pores of a size which let gas molecules through.

The Examiner’s conclusion that “the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment” **is completely in error**. The applicable definition of a “gas-permeable membrane”, attached hereto as Exhibit A, shows that such a membrane has pores of a size which let gas molecules through.

Optional gas permeable membrane 30 truly only needs to let gas molecules through, as insufflation gases are typically delivered extremely dry (column 2, lines 32-36) There is no teaching whatsoever that membrane 30 is to absorb water or release water.

What needs to pass through optional gas permeable membrane 32 is quite different. As stated at column 6, lines 44-50, “The water – containing humidifying bed 28 provides humidification within chamber 6 such that gas 27 exiting chamber 6 is humidified. After the insufflator gas 21 has been temperature/humidity conditioned in chamber 6, it exits enclosure 31 (as gas 27) through optional gas permeable membrane 32. Thus, it can be seen that optional gas permeable membrane 32 must pass gas and water vapor molecules

for the device of the ('474) patent to operate as intended. Thus there is no teaching that optional gas permeable membrane 32 is to absorb or release water. It needs to let water vapor pass-through. Therefore the entire teaching of the ('474) patent **teaches against** the Examiner's conclusion.

The Examiner has rejected claim 85 in the alternative. In view of the above, neither the "anticipation" rejection, nor is the "obviousness" rejection is proper. For an "anticipation" rejection to be proper each and every element of the claim must be found in the reference being cited. Since the Examiner's finding of a material that readily absorbs and readily releases moisture was an error, this element of claim 85 is missing, and the "anticipation" rejection" is improper.

Likewise, a rejection of claim 85 on obviousness grounds would be in error because the Ott ('474) patent does not teach or suggest a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment". It only suggests a water retaining material.

In view of the above, Claim 85 is allowable.

Rejection of Claim 86 under 35 USC§ 102(b), or in the alternative, 35 USC § 103 (a)

The Examiner has rejected Claim 86 under 35 USC § 102 (b) as anticipated by, or in the alternative, under 35 USC 103 (a), as obvious over Ott in view of the comments presented by Applicant in the REMARKS section, pages 5-8, submitted on February 9, 2005.

The Examiner states that in relation to claim 86, in Figs. 1-2, the Ott ('474) patent shows an inlet (14), a humidification device (6) in fluid communication with the inlet (14), a humidification material (30, 32) placed in a shell (16), and an outlet (29). The Examiner admits that the Ott ('474) patent does not explicitly disclose a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment".

The Examiner points out that in the REMARKS, page 5, starting at line 20, Applicant defined such material as: "one or more layers of liquid – retaining or absorbing padding or sponge material." In view of this definition, the Examiner maintains that the patent shows in chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of liquids. The use of the membranes is further defined in column 6, lines 35-36 and lines 44-51.

The Examiner concludes "Therefore, based on the teachings of Ott and the definition disclosed in the REMARKS it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment".

There are **several errors** in this analysis. First, the Examiner has stated that the Ott '474 patent shows a humidification material (30, 32) placed in a shell 16 and an outlet 29.

Nowhere in the patent are 30 and 32 referred to as a humidification material. They are only referred to as "optional gas permeable membranes".

Next, using this erroneous definition, the Examiner goes on to state that in Fig. 2 the Ott ('474) patent shows a chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water-containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of fluids. This is in error as the optional, gas permeable membranes (30,32) are not necessary when a water retaining material infused with water comprises humidification bed 28 (col. 8, Ins. 34-36). A water retaining material is not the same as a water absorbing material.

The Examiner compounds this error by stating the use of the membranes (30, 32) is further defined in column six, lines 35-36 and lines 44-51. A reading of these lines show that they do not talk amount about the membranes at all, but only discuss the water containing humidifying bed 28.

Building on these errors, the Examiner states "it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment".

The Examiner's conclusion that "the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment" **is completely in error**. The applicable definition of a "gas permeable membrane", attached hereto as Exhibit A, shows that such a membrane has pores of a size which let gas molecules through.

The Examiner's conclusion that "the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when

exposed to a dry environment” **is completely in error**. The applicable definition of a “gas-permeable membrane”, attached hereto as Exhibit A, shows that such a membrane has pores of a size which let gas molecules through.

Optional gas permeable membrane 30 truly only needs to let gas molecules through, as insufflation gases are typically delivered extremely dry (column 2, lines 32-36) There is no teaching whatsoever that membrane 30 is to absorb water or release water.

What needs to pass through optional gas permeable membrane 32 is quite different. As stated at column 6, lines 44-50, “The water – containing humidifying bed 28 provides humidification within chamber 6 such that gas 27 exiting chamber 6 is humidified. After the insufflator gas 21 has been temperature/humidity conditioned in chamber 6, it exits enclosure 31 (as gas 27) through optional gas permeable membrane 32. Thus, it can be seen that optional gas permeable membrane 32 must pass gas and water vapor molecules for the device of the ('474) patent to operate as intended. Thus there is no teaching that optional gas permeable membrane 32 is to absorb or release water. It needs to let water vapor pass-through. Therefore the entire teaching of the ('474) patent **teaches against** the Examiner’s conclusion.

The Examiner has rejected claim 86 in the alternative. In view of the above, neither the “anticipation” rejection, nor is the “obviousness” rejection is proper. For an “anticipation” rejection to be proper each and every element of the claim must be found in the reference being cited. Since the Examiner’s finding of a material that readily absorbs and readily releases moisture was an error, this element of claim 86 is missing, and the “anticipation” rejection” is improper.

Likewise, a rejection of claim 86 on obviousness grounds would be in error because the Ott ('474) patent does not teach or suggest a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment". It only teaches a water retaining material.

Further, optional gas permeable membranes (30-32) constitute two separate structures. Claim 86 requires a structure which is a unitary structure.

In view of the above, Claim 86 is allowable.

Rejection of Claim 87 under 35 USC § 103 (a)

The Examiner has rejected Claim 87 under 35 USC 103 (a), as obvious over Ott in view of the comments presented by Applicant in the REMARKS section, pages 5-8, submitted on February 9, 2005.

The Examiner states that in relation to claim 87, in Figs. 1-2, the Ott ('474) patent shows an inlet (14), a heater (20) in communication with the inlet, a temperature sensor (23), a humidification material (30,32) placed in a shell (16), and an outlet (29). The Examiner admits that the Ott ('474) patent does not explicitly disclose a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment".

The Examiner points out that in the REMARKS, page 5, starting at line 20, Applicant defined such material as: "one or more layers of liquid – retaining or absorbing padding or sponge material." In view of this definition, the Examiner maintains that the patent shows in chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a

water containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of liquids. This is in error as the optional, gas permeable membranes (30,32) are not necessary when a water retaining material infused with water comprises humidification bed 28 (col. 8, Ins. 34-36). A water retaining material is not the same as a water absorbing material.

The Examiner concludes "Therefore, based on the teachings of Ott and the definition disclosed in the REMARKS it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment".

The are **several errors** in this analysis. First, the Examiner has stated that the Ott '474 patent shows a humidification material (30, 32) placed in a shell 16 and an outlet 29. Nowhere in the patent are 30 and 32 referred to as a humidification material. They are only referred to as "optional gas permeable membranes".

Next, using this erroneous definition, the Examiner goes on to state that in Fig. 2 the Ott ('474) patent shows a chamber (6), a gas permeable membrane (30), a gas permeable membrane (32), and a water-containing humidifying bed (28) wherein the water is retained in the bed by the two gas permeable membranes that allow gas to flow, but restrict the flow of fluids.

The Examiner compounds this error by stating the use of the membranes (30, 32) is further defined in column six, lines 35-36 and lines 44-51. A reading of these lines show that they do not talk amount about the membranes at all, but only discuss the water containing humidifying bed 28.

Building on these errors, the Examiner states "it can be concluded that the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment".

The Examiner's conclusion that "the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment" **is completely in error**. The applicable definition of a "gas permeable membrane", attached hereto as Exhibit A, shows that such a membrane has pores of a size which let gas molecules through.

The Examiner's conclusion that "the gas permeable membranes disclosed in the Ott patent are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment" **is completely in error**. The applicable definition of a "gas-permeable membrane", attached hereto as Exhibit A, shows that such a membrane has pores of a size which let gas molecules through.

Optional gas permeable membrane 30 truly only needs to let gas molecules through, as insufflation gases are typically delivered extremely dry (column 2, lines 32-36) There is no teaching whatsoever that membrane 30 is to absorb water or release water.

What needs to pass through optional gas permeable membrane 32 is quite different. As stated at column 6, lines 44-50, "The water – containing humidifying bed 28 provides humidification within chamber 6 such that gas 27 exiting chamber 6 is humidified. After the insufflator gas 21 has been temperature/humidity conditioned in chamber 6, it exits enclosure 31 (as gas 27) through optional gas permeable membrane 32. Thus, it can be seen that optional gas permeable membrane 32 must pass gas and water vapor molecules

for the device of the ('474) patent to operate as intended. Thus there is no teaching that optional gas permeable membrane 32 is to absorb or release water. It needs to let water vapor pass-through. Therefore the entire teaching of the ('474) patent **teaches against** the Examiner's conclusion.

For this reason alone claim 87 is not obvious. However, the Examiner has made additional statements concerning claim 87. The Examiner states: "The Ott patent does not explicitly disclose a second inlet to transfer fluid to the humidification material. However, it is well-established by the patent that inlets would have been considered conventional in the art at the time that the invention was made. Accordingly, in view of the conventionality of inlets, the "mere duplication of parts [inlets] has no patentable significance unless a new and unexpected result is produced."

If this was the Examiner's only statement concerning the outlets, Applicant might agree with the above. However, the Examiner then speaks of the Rügheimer patent (US 4,557,261). The Examiner states that "the use of a second inlet would have been considered conventional in the art at the time the invention was made as evidenced by the teachings of Rügheimer. The Rügheimer patent shows in figure one above, the use of two inlets (4, 5) designed to infuse and mix different fluids. The Examiner concludes modifying the apparatus disclosed by Ott ('474) with a second inlet, as taught by Rügheimer, would have been considered obvious because a second inlet would have permitted the infusion and mixing of different gases, enhancing the capabilities of the apparatus.

The Examiner misapplies the Rügheimer patent. Nowhere in the '474 patent is shown any need for a second inlet. If, for the sake of argument, it would somehow be

obvious to add a second inlet, it wouldn't be done as shown by Rügheimer. One of the inlets in the present application has only gas flowing through it, and the other of the inlets in the present application has only liquid flowing through it. There is no infusion and mixing of different gases or different fluids because of the second inlet.

Further, optional gas permeable membranes (30,32) constitute two separate structures. Claim 86 requires a structure which is a unitary structure.

Therefore, because it is not obvious to add a second inlet which does not infuse or a mix different gases or different fluids, and because Ott ('474) does not show a humidification material that readily absorbs moisture and readily releases moisture when exposed to a dry environment, claim 87 is not obvious should be allowed.

Conclusion

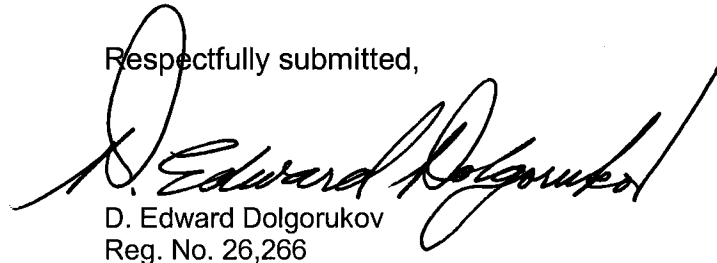
In the rejection of each of claims 82-87 the Examiner has used as a critical and necessary part of his ground of rejection that the gas permeable membranes 30 and 32 are capable of readily absorbing moisture and readily releasing moisture when exposed to a dry environment. Applicant has convincingly shown that this is simply not the case.

In addition, applicant has convincingly shown humidification bed 28 is a water retaining material, and not a water absorbing material. Only the pore size is taught to vary,

not the properties of the material. Thus, the Ott ('474) patent does not "anticipate" or "make obvious" any of the claims in the present application.

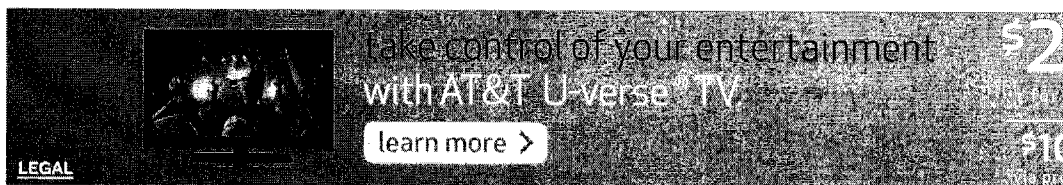
In view of all of the above, Applicants respectfully request that each of claims 82-87 again be held allowable, and the requested interference be declared.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Edward Dolgorukov", is written over the typed name and registration number.

D. Edward Dolgorukov
Reg. No. 26,266

Attorneys:
Marshall & Melhorn, LLC
Four SeaGate, 8th Floor
Toledo, OH 43604
(419) 249-7146
(419) 249-7151 FAX
dolgorukov@marshall-melhorn.com



m-w.com

Word Games

Word of the Day

New Words & Slang

Video



EXHIBIT A

permeable

Subm

permeable

Ads by Google

Porous Paving, Grasspave2

100% grass coverage, supports semis looks great & costs saves you money
grasspave2.com

per·me·able *adj* \ˈpər-mē-ə-bəl\

Definition of PERMEABLE

: capable of being permeated : PENETRABLE; *especially* : having pores or openings that permit liquids or gases to pass through <a *permeable* membrane> <*permeable* limestone>

☞ See permeable defined for English-language learners »

Examples of PERMEABLE

The cell has a *permeable* membrane.

<a *permeable* fabric that allows your body heat to escape will be much more comfortable in the summertime>

First Known Use of PERMEABLE

15th century

Related to PERMEABLE

Synonyms: passable, penetrable, pervious, porous

Antonyms: impassable (*also* impassible), impenetrable, impermeable, impervious, nonporous

